IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 369 OF 2002

Dist.: KOLHALPUR

Tanaji Dhondiba Patil,
Age 41 years, Occ. Agriculturist,
Resident of Bhulewadi, Tal. Chandgad,
District Kolhapur (At present lodged in
Kolhapur Central Prison, Kalamba,
Kolhapur) ...Appellant (Ori. Accused)

VERSUS

The State of Maharashtra ...
Respondent.

Mr. Shekhar A. Ingawale with Mr. S. Shetye for the Appellant

Mrs. P.H. Kantharia, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, AG. C.J., &
SMT. NISHITA MHATRE, J.
DATE: SEPTEMBER 4, 2006

JUDGMENT (Per V.G. Palshikar, Ag. C.J.): -

1. Being aggrieved by the judgment and order of conviction in Sessions Case No. 13 of 2001, convicting the appellant under Section 302 of the Indian Penal Code, sentencing to suffer imprisonment for

life, the appellant above-named has preferred this appeal on the grounds mentioned in the Memo of Appeal, as also canvassed by the learned counsel appearing on behalf of the appellant.

2. With the assistance of the learned counsel for the accused, and the learned Additional Public Prosecutor, we have appreciated the evidence on record; and the prosecution story, as it emerges therefrom, is that the accused was the husband of the deceased, and they had certain bickerings and misunderstandings about each other. According to the prosecution, on 9th January, 2001, the accused, along with the victim, went to agricultural field called *"Taliche Shet"*, where the accused allegedly killed the victim, Sangita, by inflicting blows of sickle on her person. After so assaulting her, the accused returned to his house, carrying the sickle and blood-stained clothes with him. He was seen in that condition by some villagers, and ultimately, according to P.W.1, Bhagoji, the Police Patil of the village, the accused was taken to the Police Outpost, Kowad. There, the F.I.R. was lodged, seizure of the sickle was executed, and investigation was started. Thereafter, the accused was arrested, his clothes were seized, and on completion of the investigation, the accused was charged of having committed murder of Sangita. The prosecution examined 10 witnesses to prove

its case, and on appreciation of the oral and documentary evidence, the learned trial Judge came to the conclusion of guilt, as aforesaid. It is this order of conviction and sentence which is challenged in this appeal.

3. Mr. Ingawale, learned counsel appearing on behalf of the appellant-accused, submitted that the entire evidence, even if it is accepted, is grossly insufficient to warrant conviction under Section 302 of the Indian Penal Code. By taking us through the evidence, he has established such infirmities, which existed, and contended that the cumulative effect of these irregularities and omissions, of necessity, requires acquittal of the accused, and the prosecution has failed to prove, beyond any reasonable doubt, that it was the accused who assaulted the victim. The learned Additional Public Prosecutor, however, pleaded for confirmation of the impugned order, as, according to the prosecutor, the conclusions drawn by the learned trial Judge were based on evidence, and there is, therefore, no need to interfere. We have examined the case in the light of the evidence as it existed.

4. P.W.1 is the Police Patil, who took the accused, along with the sickle, to the police outpost, where the sickle was seized from the accused. This witness has turned hostile, and was substantially cross-examined by the prosecutor. From his examination-in-chief, and what has been stated by him in cross-examination, it appears that the witness was deliberately trying to help the accused, and, therefore, has made certain statements favourable to the prosecution and certain statements unfavourable to it. No reliance can be placed on the testimony of such witness. It is, however, pertinent to note that according to this witness also, when he accosted the accused, the accused was carrying the bloodied sickle, and his clothes were stained with mud and blood. Yet, there is no explanation on record as to why the accused was not immediately apprehended by P.W.1, and his clothes, which had blood-stains, not seized.

5. P.W.2 is one of the villagers, who saw the accused with the sickle and having stains of mud and blood on his clothes. The fact that his clothes were bloodied and he had a sickle in his possession is, therefore, corroborated by this witness. If this aspect of the witness's deposition is to be accepted as correct, then there is no explanation coming forward from the prosecution as to why, in spite of such

condition existing, the accused was not immediately arrested, his clothes where not immediately seized and the blood report was not obtained from the laboratory. The prosecution has, thus, lagged behind in bringing before the Court certain necessary particulars, which it ought to have done.

6. P.W.3 is the *panch* witness, in whose presence, the sickle was seized at the police outpost. He proves the seizure of the sickle. However, when the sickle was seized, the accused was present, and this witness does not speak of the clothes of the accused being stained with blood and mud. Absence of such statement by this witness about the seizure of clothes immediately by the police militates against the prosecution claim that the clothes of the accused were stained with mud and blood.

7. P.W.4 is the doctor, who conducted the *post-mortem*, and proved that the death of Sangita was homicidal in nature.

8. P.W.5 speaks of talking to the deceased just before her leaving for the field. However, this witness mentions that she talked of danger in field *Tampal*, whereas the accused had gone with the victim

to field *Taliche Shet*, and this witness has clearly deposed in her examination that both the fields are different in nature. This witness was examined to prove that the accused did take the victim to the field called "*Taliche Shet*"; but this witness does not say so.

9. P.W. 6 is the Police Inspector, who was the Investigating Officer for the crime concerned. He has deposed to the investigation as conducted by him. He has proved the recovery, and has deposed to the injuries on the accused. All that is proved is that several clothes were seized from the house of the accused. No effort is made to connect the stains of blood to that of the deceased.

10. P.W.7 is the *Panch*, who was present when the spot *panchnama* was recorded. He deposes as to how the *panchnama* was prepared and proves. Consequently, the prosecution has proved that the victim died at the spot mentioned in the *panchnama* .

11. P.W.8 is another *panch*, who has proved the arrest *panchnama* : The accused was arrested in his presence. Thereafter, the accused's clothes, etc., were recovered from him.

12. P.W.9, Pachandi, is the Assistant Sub Inspector, who was present in the outpost when P.W.1 brought the accused there. He does not mention anything about the clothes of the accused being stained with blood and mud. He speaks of seizure of the sickle, but gives no explanation whatever regarding non-seizure of the clothes on the person of the accused which, according to some witnesses, were seen with blood. In fact, P.W.9 does not refer to the presence of the accused at the outpost.

13. There is no evidence on record as to why the bloodied clothes were not recovered immediately when two or three witnesses stated that those are the clothes on the person of the accused, and P.W.1 stated that he produced the accused in this condition before the police. Several important circumstances have, thus, not been proved by the prosecution. There is no adequate proof regarding the accused being present in the field. Injuries on the person of the accused are not explained. Blood-stained clothes of the accused are seized later on; but explanation as to why they were not seized immediately is absent. Even after the recovery of the stained clothes, they are not further analyzed to prove that the stains were of the blood belonging to the victim. In the absence of any such clinching evidence, the broad outline made by the prosecution, even if it is held proved, is grossly

insufficient to warrant conviction of the accused under Section 302 of the Indian Penal Code.

14. The learned trial Judge speaks of extra-judicial confession, but even in relation to extra-judicial confession, there is no admissible evidence on record, nor is such a confession proved. Assuming that there was such an extra-judicial confession by the accused, it has to be proved to have been made voluntarily. No such explanation is forthcoming. In our opinion, therefore, the learned trial Judge has committed an error of convicting the accused on such scanty evidence, and his judgment is unsustainable in law.

15. In the result, the appellant-accused succeeds in this appeal. The order of conviction is set aside. The accused be released forthwith, if not otherwise required.